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PUBLIC DOCUMENT

January 15, 2002

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative ("USTR")
600 17th Street, NW
Washington DC 20508

Re: **§201/203 Safeguards, Certain Steel Products; Exclusion Request for
Indian Stainless High Speed Steel (Product Category 27)**

Dear Ms. Blue:

The Powmex Steels Division of GKW Limited ("GKW") is an Indian exporter of High Speed Steel ("HSS"), Tool and Die Steel and Powder Metallurgy Steel to various countries including the United States. GKW answers the submissions of U.S. producers as follows (essentially GRW's January 4, 2002 comments, adding the attachment from The Making, Shaping and Treating of Steel):

1. Three of the ITC Commissioners found that imports of Stainless and Alloy Tool Steel Products ("tool steel"; Product Category 27) have not caused serious injury, nor threatened serious injury, to a U.S. industry, thus rejecting any §201 action. The other three ITC Commissioners found injury. Thus, the tool steel product category has gone to the President for his decision, as the ITC is divided. Serious questions now exist whether the real ITC vote was 3 to 2 against any §201 action given court appeals as to whether Commissioner Devaney (one of the 3 affirmative votes on tool steel) was legally appointed. See attached. In any event, the President should accept the views of the three ITC Commissioners finding no injury and reject §201 import restrictions.

The negative injury finding of three ITC Commissioners is sound. As stated by Vice-Chairman Okun and Commissioners Miller and Hillman, the domestic tool steel industry "remained reasonably profitable, increased its production, shipments and capacity levels, and saw its employment levels grow during the five full years of the period of investigation." *Steel*, Inv. No. TA-201-73, Vol. I: *Determinations and Views of*

Commissioners, USITC Pub. 3479 (Dec. 2001) at 233. In addition, historically tool steel imports have been necessary to meet U.S. demand. Indeed, three major U.S. tool steel manufacturing units -- i.e., Teledyne Allvac (Bohler, Austria), Era Steel (Eramet of France) and Hitachi Metal (Japan), captively import tool steel in coil form to process into smaller sizes, and 5 of 11 U.S. steel tool producers who took a position on relief opposed the granting of any §201 import relief. *Id.* at Vol. III, Stainless-5.

2. Imports of steel from India covered by product category 27 (HSS in particular and tool steel generally) were under 3% of all such imports in 2000. Imports from India and other WTO developing countries (Argentina, Brazil, the Czech Republic, Indonesia, and Venezuela) totaled 8.68% of total imports in 2000. India thus qualifies for the WTO developing country exception from the application of any safeguards (§201) remedies. As the WTO Agreement on Safeguards states in Article 9.1.

Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3%, provided that developing country Members with less than 3% import share collectively account for not more than 9% of total imports of the product concerned.

Although U.S. law does not have a specific statutory provision mandating the application of Article 9.1, the President has applied it in past cases.^{1 2}

3. Indian HSS steel imports in particular similarly are negligible and have had no injurious effects on U.S. producers of HSS. For the first nine months of 2001, HSS imports from India totaled 43MT, only 0.65% of total HHS imports of 6589MT. See the official U.S. import statistics under tariff category HSUS 7228.10.

Indian exports of HSS to the United States are not injurious to U.S. producers. Such Indian HSS exports to the United States have been:

Year	Qty (MT)	FOB Value \$	CIF Value \$
1996	29	162956	165914
1997	91	367418	376583
1998	144	580650	593442
1999	75	299517	305816
2000	81	306969	313496
2001	17	82788	84050

¹ See Proclamation 7103 of May 30, 1998 to Facilitate Positive Adjustment to Competition from Imports of Wheat Gluten, 63 FR 30359, 30360 (June 1998); Notifications Pursuant to Article 12(C) and Article 9, Footnote 2 of the Agreement of Safeguards, G/SG/N/10/U.S.A./2, G/SG/N/11/USA2 (June 8 1998).

² It should be noted that application of Article 9.1 in the current proceeding is consistent with the Supreme Court's Charming Betsy Doctrine which requires that U.S. law "never...be construed to violate the law of nations if any other possible construction remains." *Murray v. Schooner Charming Betsy*, 6. U.S. (2 Cranch) 64, 118 (1804).

The U.S. HSS market is 30,000 MT per annum, with 20,000 MT of domestic HSS production. Thus, the Indian share of the U.S. HSS market and U.S. production is de minimis (under 0.2%) and indeed rapidly declining.

The average price of exports of Indian HSS to the U.S. is around \$4/kg FOB Indian port, one-third higher than the average price of around \$3/kg at which HSS is sold by Russia, China and Ukraine into the U.S. Given the de minimis volume and high price of Indian HSS (compared to the other HSS exporting countries to the U.S.), the U.S. HSS industry in particular is not injured by Indian imports.

4. HSS is a distinct product and not interchangeable in use with tool steel. Thus, under WTO standards, HSS and tool steel are separate “like products” such that separate injury decisions should (indeed are required to) be made for HSS and tool steel under WTO safeguards provisions. The ITC’s failure to do so is contrary to the WTO.

Tool steel is low alloy steel, while HSS has a large amount of carbide forming elements with high alloy content. Tool steels are used in press tools, injection moulds, die-casting dies, etc. -- i.e. for cold working and hot working. The manufacture of tool steel is not difficult and does not require a sophisticated process. Many manufacturers around the world produce tool steel.

In contrast, the manufacture of HSS is sophisticated and involves high alloy steel. As describe in *The Making, Shaping and Treating of Steel*,

High speed steels differ from the lower alloy tool steels, not only by the presence of higher percentages of carbide-forming elements, but also by the fact that the secondary hardening effects of these elements impart a high resistance to softening at elevated temperature. These steels require a special heat treatment in order that their unique properties may be fully realized.³

HSS is used for high speed cutting application -- e.g. drill bits, taps, milling cutters, reamers, broaches, hobs, etc. Attached is a tabulation of the chemical composition of tool steel and HSS

The price of HSS is far higher than the price of tool steel. The price of tool steel is 1.2 to 2.0 US\$/kg (depending on grade). The price of HSS is up to 8 times more, at 4.0 to 10 US\$/kg. The cobalt bearing grades of HSS like M35, M42 & T42 are much higher in price compared to M2 of steel grade. Costs of producing HSS and tool steel are similarly different. The dramatically different prices and costs of HSS versus tool steel reflect the fact that they are distinct products and not interchangeable in use – otherwise users would just use the cheaper tool steel. Both producers and customers view tool steel and HSS as completely different, not interchangeable, for the above reasons.

Even if (wrongly and contrary to the WTO requirement of separate decisions for each “like product”) tool steel and HSS are combined for §201 purposes, imports of tool

³ United States Steel, *The Making, Shaping and Treating of Steel*, 10th ed., at 1309.

steel and HSS from India total some 600 to 700 MT per year from the figures in the ITC report and thus are still under 1% of the total imported tool steel and HSS. Thus, again, India is under 3% of imports, and qualifies for the developing country exception to WTO safeguards action.

5. For the above reasons, Indian HSS should be exempted from any §201 action, whether (a) as a separate product warranting exclusion because not injurious to the U.S. industry or (b) because India qualifies for the developing country exception to §201 remedies.. We appreciate the Trade Policy Staff Committee's consideration of these views. Please advise of any questions.

Respectfully submitted,



Peter Koenig
Mitchell Dale

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American Metal Market, January 2, 2002

Offshore lawsuit targets Devaney's ITC post

By Nancy E. Kelly

WASHINGTON, Jan. 2 -- A lawsuit challenging the appointment of Dennis Devaney to the U.S. International Trade Commissioner last year could have negative ramifications for U.S. producers of grain-oriented silicon electrical steel.

The U.S. Court of International Trade recently gave the green light to a discovery motion filed on behalf of producers of grain-oriented electrical steel from Italy and Japan on Dec. 28, 2001, denying a motion of dismissal filed by the ITC and thus allowing the case to continue.

The suit over Devaney's appointment was filed shortly after the ITC voted three to three in a sunset review case last year to continue standing duty orders of 31.08 percent against subject imports from Japan and 60.79 percent against imports from Italy. A tie vote is considered an affirmative determination, allowing the duties to remain on the books.

Devaney, along with Stephen Koplan, chairman, and Marcia Miller voted to keep the duties in place. If the suit prevails and Devaney's appointment is ruled illegal, it potentially could jeopardize any close ITC determinations in which Devaney's participation caused the swing vote and possibly overturn some trade cases.

President Clinton named Devaney an ITC commissioner shortly before he left office last January. Lawyers filing the suit argued that the "attempted" recess appointment was invalid because there was neither a Senate recess at the time of the appointment nor a vacancy on the ITC. Devaney replaced then-commissioner Thelma Askey.

Devaney's appointment ended last month and he officially resigned as commissioner.

Washington steel interests welcomed Devaney's appointment as a replacement for Askey, who often voted against the domestic industry in anti-dumping and countervailing duty cases.

Pages 1 & 2 are from The Making, Shaping and Treating of Steel. Since these pages are difficult to read, they are retyped in the attached pages 3-4.

ALLOY TOOL STEELS

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Table 43-1. AISI Identification and Type Classifications of Commonly Used Tool Steels

Type	Identifying Elements, Per Cent									
	C	Mn	P	S	W	Mo	Cr	V	Co	Ni
HIGH-SPEED TOOL STEELS										
Symbol M, Molybdenum Type										
M1	0.85-1.00	0.15-0.35	0.01	0.01	1.50	0.40	4.00	1.00	—	—
M2	0.85-1.00	0.15-0.35	0.01	0.01	0.80	0.40	4.00	0.80	—	—
M2, Class 1	1.00	0.15-0.35	0.01	0.01	0.80	0.40	4.00	0.80	—	—
M2, Class 2	1.00	0.15-0.35	0.01	0.01	0.80	0.40	4.00	0.80	—	—
M4	1.00	0.15-0.35	0.01	0.01	0.80	0.40	4.00	0.80	—	—
M6	0.80	0.15-0.35	0.01	0.01	0.80	0.40	4.00	1.00	10.00	—
M7	1.00	0.15-0.35	0.01	0.01	1.70	0.35	4.00	0.80	—	—
M10	0.85-1.00	0.15-0.35	0.01	0.01	—	0.40	4.00	0.80	—	—
M20	0.80	0.15-0.35	0.01	0.01	2.00	0.40	4.00	1.00	10.00	—
M21	0.80	0.15-0.35	0.01	0.01	1.00	0.40	4.00	1.00	10.00	—
M23	0.80	0.15-0.35	0.01	0.01	2.00	0.40	4.00	1.00	10.00	—
M24	0.80	0.15-0.35	0.01	0.01	0.80	0.40	4.00	0.80	10.00	—
M41	1.00	0.15-0.35	0.01	0.01	0.80	0.35	4.00	0.80	10.00	—
M42	1.00	0.15-0.35	0.01	0.01	1.00	0.40	3.75	1.00	10.00	—
M43	1.00	0.15-0.35	0.01	0.01	2.70	0.40	3.75	1.00	10.00	—
M44	1.00	0.15-0.35	0.01	0.01	2.00	0.40	4.00	0.80	10.00	—
M46	1.00	0.15-0.35	0.01	0.01	2.00	0.40	4.00	0.80	10.00	—
M47	1.00	0.15-0.35	0.01	0.01	1.00	0.40	3.75	1.00	10.00	—
Symbol T, Tungsten Type										
T1	0.75-0.85	0.15-0.35	0.01	0.01	10.00	—	4.00	1.00	—	—
T2	0.80	0.15-0.35	0.01	0.01	10.00	—	4.00	0.80	—	—
T4	0.75	0.15-0.35	0.01	0.01	10.00	—	4.00	1.00	10.00	—
T5	0.80	0.15-0.35	0.01	0.01	10.00	—	4.00	0.80	10.00	—
T6	0.80	0.15-0.35	0.01	0.01	10.00	—	4.00	1.00	10.00	—
T8	0.75	0.15-0.35	0.01	0.01	14.00	—	4.00	0.80	10.00	—
T15	1.00	0.15-0.35	0.01	0.01	10.00	—	4.00	0.80	10.00	—
HOT-WORK TOOL STEELS										
Symbol H, H1-H10, Incl., Chromium Type										
H10	0.40	0.15-0.35	0.01	0.01	—	0.40	0.40	0.40	—	—
H11	0.35	0.15-0.35	0.01	0.01	—	1.00	0.40	0.40	—	—
H12	0.35	0.15-0.35	0.01	0.01	1.00	1.00	0.40	0.40	—	—
H13	0.35	0.15-0.35	0.01	0.01	—	1.00	0.40	1.00	—	—
H14	0.40	0.15-0.35	0.01	0.01	0.80	—	0.40	—	—	—
H15	0.40	0.15-0.35	0.01	0.01	4.00	—	0.40	0.40	—	—
H10-H15 Incl., Tungsten Type										
H10	0.35	0.15-0.35	0.01	0.01	0.40	—	0.40	—	—	—
H11	0.35	0.15-0.35	0.01	0.01	1.00	—	0.40	—	—	—
H12	0.35	0.15-0.35	0.01	0.01	10.00	—	10.00	—	—	—
H13	0.40	0.15-0.35	0.01	0.01	10.00	—	3.00	—	—	—
H14	0.35	0.15-0.35	0.01	0.01	10.00	—	4.00	—	—	—
H15	0.35	0.15-0.35	0.01	0.01	10.00	—	4.00	1.00	—	—
H10-H15 Incl., Molybdenum Type										
H41	0.40	0.15-0.35	0.01	0.01	1.00	0.40	4.00	1.00	—	—
H42	0.40	0.15-0.35	0.01	0.01	0.80	0.40	4.00	0.80	—	—
H43	0.40	0.15-0.35	0.01	0.01	—	0.40	4.00	0.80	—	—

(Continued on next page)

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THE MAKING, SHAPING AND TREATING OF STEEL

Table 43—J (Continued)

Type	Typical Elements, Per Cent									
	C	Mn	Si	V	Mo	Cr	V	Co	W	Ni
COLD WORK TOOL STELS										
Symbol D; High-Carbon, High-Chromium Types										
D1	1.50	—	—	—	1.00	12.00	1.00	—	—	—
D2	2.05	—	—	—	—	12.00	—	—	—	—
D3	2.05	—	—	—	1.00	12.00	—	—	—	—
D4	1.50	—	—	—	1.00	12.00	—	0.50	—	—
D5	2.05	—	—	—	1.00	12.00	0.50	—	—	—
Symbol A; Medium-Alloy, Air-Hardening Types										
A2	1.00	—	—	—	1.00	5.00	—	—	—	—
A3	1.35	—	—	—	1.00	5.00	1.00	—	—	—
A4	1.00	0.50	—	—	1.00	1.00	—	—	—	—
A5	0.50	0.50	—	—	1.00	1.00	—	—	—	—
A7	0.50	—	—	1.00	1.00	5.00	4.00	—	—	—
A8	0.50	—	—	1.00	1.00	5.00	—	—	—	—
A9	0.50	—	—	—	1.00	5.00	1.00	—	—	—
A10	1.00	1.00	1.00	—	1.00	—	—	—	1.00	—
Symbol O; Oil-Hardening Types										
O1	0.50	1.00	—	0.50	—	0.50	—	—	—	—
O2	0.50	1.00	—	—	—	—	—	—	—	—
O3	1.00	—	1.00	—	0.50	—	—	—	—	—
O7	1.00	—	—	1.00	—	0.50	—	—	—	—
HOCK-HEATING TOOL STELS										
Symbol S										
S1	0.50	—	—	0.50	—	1.00	—	—	—	—
S2	0.50	0.50	0.50	—	0.50	—	—	—	—	—
S7	0.50	—	—	—	1.00	1.00	—	—	—	—
MOLD STEELS										
M1	0.50	—	—	—	0.50	1.00	—	—	0.50	—
M2	0.50	—	—	—	—	0.50	—	—	1.00	—
M3	0.50	—	—	—	—	0.50	—	—	—	—
M4	0.50	—	—	—	—	0.50	—	—	—	—
M5	0.50	—	—	—	—	1.00	—	—	—	—
M6	0.50	—	—	—	—	—	—	—	—	1.00
SPECIAL PURPOSE TOOL STEELS										
Symbol L; Low-Alloy Types										
L1	0.50—1.00	—	—	—	—	1.00	0.50	—	—	—
L2	1.00	—	—	—	—	1.00	0.50	—	—	—
L3	0.50	—	—	—	0.50	0.50	—	—	1.00	—
Symbol P; Carbon-Steels Types										
P1	1.00	—	—	1.00	—	—	—	—	—	—
P2	1.00	—	—	0.50	—	—	—	—	—	—

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Table 43--I. AISI Identification and Type Classifications of Commonly Used Tool Steels

Type	Identifying Elements, Per Cent									
	C	Mn	Si	W	Mo	Cr	V	Co	Ni	Al
HIGH-SPEED TOOL STEELS ← *										
Symbol M, Molybdenum Types										
M1	0.80	...	...	1.50	8.00	4.00	1.00	...	...	...
M2	0.85:1.00	...	...	6.00	5.00	4.00	2.00	...	...	...
M3, Class 1	1.05	...	...	6.00	5.00	4.00	2.40	...	...	...
M3, Class 2	1.20	...	...	6.00	5.00	4.00	3.00	...	...	...
M4	1.30	...	...	5.50	4.50	4.00	4.00	...	...	...
M6	0.80	...	...	4.00	5.00	4.00	1.50	12.00	...	...
M7	1.00	...	...	1.75	8.75	4.00	2.00	...	...	...
M10	0.85:1.00	...	...	...	8.00	4.00	2.00	...	...	...
M30	0.80	...	...	2.00	8.00	4.00	1.25	5.00	...	...
M33	0.90	...	...	1.50	9.50	4.00	1.15	8.00	...	...
M34	0.90	...	...	2.00	8.00	4.00	2.00	8.00	...	...
M36	0.80	...	...	6.00	5.00	4.00	2.00	8.00	...	...
M41	1.10	...	...	6.75	3.75	4.25	2.00	5.00	...	...
M42	1.10	...	...	1.50	9.50	3.75	1.15	8.00	...	...
M43	1.20	...	...	2.75	8.00	3.75	1.60	8.25	...	...
M44	1.15	...	...	5.25	6.25	4.25	2.25	12.00	...	...
M46	1.25	...	...	2.00	8.25	4.00	3.20	8.25	...	...
M47	1.10	...	...	1.50	9.50	3.75	1.25	5.00	...	...
Symbol T, Tungsten Types										
T1	0.75	...	...	18.00	...	4.00	1.00	...	...	...
T2	0.80	...	...	18.00	...	4.00	2.00	...	...	...
T4	0.75	...	...	18.00	...	4.00	1.00	5.00	...	...
T5	0.80	...	...	18.00	...	4.00	2.00	8.00	...	...
T6	0.80	...	...	20.00	...	4.50	1.50	12.00	...	...
T8	0.75	...	...	14.00	...	4.00	2.00	5.00	...	...
T15	1.50	...	...	12.00	...	4.00	5.00	5.00	...	...
HOT-WORK TOOL STEELS										
Symbol H										
H1-H19, incl. Chromium Types										
H10	0.40	...	...	...	2.50	3.25	0.40	...	...	...
H11	0.35	...	...	...	1.50	5.00	0.40	...	...	...
H12	0.35	...	...	1.50	1.50	5.00	0.40	...	...	...
H13	0.35	...	...	...	1.50	5.00	1.00	...	...	...
H14	0.40	...	...	5.00	...	5.00	...	...	...	...
H19	0.40	...	...	4.25	...	4.25	2.00	4.25	...	...
H20-H39 incl. Tungsten Types										
H21	0.35	...	...	9.00	...	3.50	...	...	...	...
H22	0.35	...	...	11.00	...	2.00	...	...	...	...
H23	0.30	...	...	12.00	...	12.00	...	...	...	...
H24	0.45	...	...	15.00	...	3.00	...	...	...	...
H25	0.25	...	...	15.00	...	4.00	...	...	...	...
H26	0.50	...	...	18.00	...	4.00	1.00	...	...	...
H40-H59, incl., Molybdenum Types										
H41	0.65	1.50	8.00	4.00	1.00
H42	0.60	6.00	5.00	4.00	2.00
H43	0.55	8.00	4.00	2.00

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Table 43-I (continued)

Identifying Elements, Per Cent

Type	C	Mn	Si	W	Mo	Cr	V	Co	Ni	Al
COLD WORK TOOL STEELS										
Symbol D, High-Carbon, High-Chromium Types										
D2	1.50	...	...	...	1.00	12.00	1.00	...	...	...
D3	2.25	...	...	...	...	12.00	...	...	...	...
D4	2.25	...	...	...	1.00	12.00	...	...	...	...
D5	1.50	...	...	...	1.00	12.00	...	3.00	...	...
D7	2.35	...	...	...	1.00	12.00	4.00	...	...	...
Symbol A, Medium-Alloy, Air-Hardening Types										
A2	1.00	...	...	...	1.00	5.00	...	...	...	...
A3	1.25	...	...	...	1.00	5.00	1.00	...	...	...
A4	1.00	2.00	...	...	1.00	1.00	...	...	...	...
A6	0.70	2.00	...	...	1.25	1.00	...	...	...	...
A7	2.25	...	...	1.00	1.00	5.25	4.75	...	...	...
A8	0.55	...	...	1.25	1.25	5.00	...	...	...	...
A9	0.50	...	...	...	1.40	5.00	1.00	...	1.50	...
A10	1.35	1.80	1.25	...	1.50	...	...	...	1.80	...
Symbol O; Oil-Hardening Types										
O1	0.90	1.00	...	0.50	...	0.50	...	...	...	...
O2	0.90	1.60	...	...	...	...	...	...	...	...
O6	1.45	...	1.00	...	0.25	...	...	...	...	...
O7	1.20	...	...	1.75	...	0.75	...	...	...	...
SHOCK-RESISTING TOOL STEELS										
Symbol S										
S1	0.50	...	...	2.50	...	1.50	...	...	...	...
S2	0.50	...	1.00	...	0.50	...	...	...	...	...
S5	0.55	0.80	2.00	...	0.40	...	...	...	...	...
S7	0.50	...	...	...	1.40	3.25	...	...	...	...
MOLD STEELS										
Symbol P										
P2	0.07	...	...	...	0.20	2.00	...	...	0.50	...
P3	0.10	...	...	...	...	0.60	...	...	1.25	...
P4	0.07	...	...	...	0.75	5.00	...	...	...	...
P5	0.10	...	...	...	...	2.25	...	...	...	...
P6	0.10	...	...	...	...	1.50	...	...	3.50	...
P20	0.35	...	...	...	0.40	1.25	...	...	...	...
P21	0.20	...	...	...	...	...	...	...	4.00	1.20
SPECIAL PURPOSE TOOL STEELS										
Symbol L: Low-Alloy Types										
L2	0.50-1.10	...	...	...	...	1.00	0.20	...	...	...
L3	1.00	1.50	0.20
L6	0.70	0.25	0.75	1.50	...
Symbol F: Carbon-Tungsten Types										
F1	1.00	1.25
F2	1.25	3.50

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